IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5973 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AABADBHAI DADABHAI SINDHI SON & 8 - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR PRAKASH K JANI for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4 - 5, 5.2.1,5.2.2 - 9.
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 27/01/2006

ORAL JUDGMENT

1.In the present petition the petitioners have challenged an order dated 07-10-1992 passed by Gujarat Revenue Tribunal in Appeal No. TEN A.A. 57/86. By the said

order, the appeal filed by the petitioners against the order dated 14-03-1986 passed by the Officer on Special Duty under Gujarat Private Forests (Acquisition) Act, 1972 (here-in-after referred to as “the said Act”), came to be rejected.

2. Short facts leading to the present petition are that the petitioners are the owners of land bearing survey nos. 169, 191 and 192 of village Chitrasani, Taluka Palanpur, District Banaskantha. The petitioners were Jagirdars of the lands in question. Pursuant to the action on the part of the State Government to abolish such Jagirs, possession of these lands was taken over by the State Government on 29-06-1955. With respect to the ownership of the lands and disputes that arose between the petitioners and State Government, this Court is not directly concerned in the present petition. Suffice to say that under the provisions of the said Act, the petitioners were entitled to receive compensation for having lost the lands as well as for the trees standing on such lands. In the present litigation, this Court is concerned with computation of the compensation required to be paid to the petitioners by the State Government for the standing trees on the

lands, possession of which was taken away by the State Government. In terms of provisions contained in the said Act, Officer on Special Duty was pleased to pass an order on 14-03-1986 whereby he was pleased to award a sum of Rs.82,355.42ps. towards the cost of the trees standing on the lands in question. He also directed the payment of the said amount along with interest at the rate of 4½ % from 01-08-1973. The expectations of the petitioners were much higher. Eventually, the proceedings reached Gujarat Revenue Tribunal by an appeal filed by the petitioners and was numbered as Appeal No. TEN A.A. 57/86. The Division Bench of Gujarat Revenue Tribunal by judgement dated 07-10-1992 was pleased to dismiss the appeal filed by the petitioners which prompted the petitioners into filing the present petition.

3. In the impugned judgement, Gujarat Revenue Tribunal was pleased to uphold the valuation of trees as done by the State Government as found by the Officer in Special Duty. It was held that the appellants were not able to prove that the statements produced on record are for 1 acre for survey no.169 and 191 and for 3 acres for survey no. 192. It was held that it was proved that

these statements are for 10 acres and 30 acres for survey no. 169 and 191, and 192 respectively. It was held that there is absolutely no evidence on record to support the arguments advanced by the learned advocate Shri Acharya for the appellants. It is this judgement of Gujarat Revenue Tribunal which the petitioners have challenged in the present petition.

4. Broadly stated, the case of the petitioners as canvassed to the learned advocate Shri Prakash Jani is that the State Authorities and Officer on Special Duty has erred in calculating total number of trees standing on lands in question. It was contended that the samples prepared by the officers of the State Government were only for 1 acre each and that the number of trees found in 1 acre was projected over the entire plot without making necessary adjustments. It was contended that the authorities were required to take sample survey of approximately 10% of the plot area, that they therefore, ought to have prepared the plot of 10 acres and 30 acres depending on the land size and only after calculating the total number of trees standing on such plots that the approximate projection could have been made. In essence what is sought to be suggested is that

the authorities had taken sample plot size of only 1 acre for calculating total number of trees standing on such a plot and without any further adjustments, had projected the total number of trees as if the findings are for 10 acres plot. It is thus contended that there was great loss and injury caused to the petitioners due to this defective methodology adopted by the officers of the State Government. In this regard the learned advocate for the petitioners placed heavy reliance on the deposition of Shri Dhanabhai Mulabhai Vankar who had given his statement at exh.6 and on the deposition of Shri Govindlal Chandulal Shah whose evidence was recorded at exh.7. On the depositions made by these witnesses and other witnesses, reference to which will be made at a slightly later stage, it was contended that Gujarat Revenue Tribunal failed to take into account the impact of the statements made by the above witnesses. It was argued that these witnesses had stated in their deposition that sample plots were only of 1 acre each. It was contended that these were State witnesses and their deposition could not have been ignored by the Tribunal. It was next contended that other documents and oral evidence produced in the course of inquiry were not properly appreciated by the

Tribunal and the Tribunal which was acting as First Appellate Court ought to have examined all questions of law as well as facts which it failed to do.

4.1 It was next contended that proper opportunity to cross examine Shri Vaghela was not given. It is contended that the application for permitting further cross examination of the said witnesses was unjustly turned down.

4.2 It was also contended that the averments made in the petition have remained unanswered. The State Government has not filed any reply controverting the averments made in the petition and, therefore, also the petition should be allowed.

5. The learned AGP Shri Gori appearing for the respondents supported the order passed by Gujarat Revenue Tribunal. He pointed out that several witnesses who were examined on behalf of State Government have deposed that the sample plots of 10 acres and 30 acres were prepared. That the same is borne out from the documentary evidence. It is contended that the petitioners have failed to establish their averments. It was argued that

Gujarat Revenue Tribunal has given its findings based on evidence on record. Such findings cannot be categorised as perverse and this Court therefore, in exercise of power under Article 227 of the Constitution of India would not overrule such findings and substitute the same by contrary factual conclusions as suggested by the learned advocate for the petitioners.

5.1 He submitted that the deposition of witnesses Shri Dhanabhai Mulabhai Vankar (exh.6) and Shri Govindlal Chandulal Shah (exh.7) cannot be read in isolation. He submitted that other witnesses have clearly deposed that the sample plots were of 10 acres and 30 acres respectively and that entries to this effect is made in the records.

6. Having heard the learned advocates for the parties and having perused the material on record it may be noted that Gujarat Revenue Tribunal in its impugned judgement has considered the material on record at considerable length. The Tribunal was examining the order passed by the Officer on Special Duty. The Tribunal itself was thus re-appreciating the evidence as the Appellate Court. I find that the Tribunal has adverted to all the

relevant aspects of the matter and come to a certain factual findings with respect to the central controversy arising namely whether sample plots which are prepared for survey were of 1 acre and 3 acres respectively or of 10 acres and 30 acres respectively. The Tribunal has given its definite findings after examining the evidence on record and discussing at some length the deposition of the witnesses and other documentary evidence. The Tribunal came to the conclusion that :

> “17. In the result, we hold that the appellants have not been able to prove that the statements produced on record are for one acre for S.Nos. 169 and 191 and 3 acres for S.Nos. 192. It is duly proved that these statements are for 10 acres and 30 acres for S.Nos.169 and 191 and 192 respectively. We are not impressed by the arguments advanced by learned Advocate Shri Acharya that the sample plots should be treated of 1 acre and 3 acres respectively. There is absolutely no evidence on record to support the arguments advanced by learned Advocate Shri Acharya in this respect. “

7. In exercise of power under Article 227 of the Constitution of India, there has to be strong reasons for this Court to set aside the findings of fact. With narrow scope of inquiry possible under the circumstances, I have heard the learned advocates appearing for the parties at some length and have also perused the evidence on record.

7.1 Shri Dhanabhai Mulabhai Vankar working as beat guard in the Forest Department was examined at exh.6. In his deposition he has stated that sample enumeration was carried out in one plot in survey no. 191 and three plots in survey no.192. He however, specifically stated that he did not know as to for how many acres such enumeration was done. In his cross examination, he however, stated that after calculating the trees in 1-1 acre, registers were prepared and accordingly after having undertaken the survey of the entire area, information was sent to the office. He could not say as to how further calculations were made by the office people. He only could say that he had made calculations for 1-1 acre plots. He could not answer as to whether from his 1-1 acre calculation, office converted the same into 30 acres calculation.

7.2 Shri Govindlal Chandulal Shah who was Surveyor was examined at exh.7. He has stated in his deposition that three plots of 1 acre each were made in survey no.192. He has stated that after preparing the plots he has done nothing further. Counting was done by the Forest Officer and he was not present at the time of such counting. He stated that at the time of plotting

Shri Dhanabhai Mulabhai Vankar was present. Nothing worthwhile has come out in his cross examination.

7.3 On the deposition of the above two witnesses, much reliance was placed on behalf of the petitioners. It was sought to be conveyed that both these witnesses who were examined by the State Government have supported the theory that sample size of plot was 1 acre each and that accordingly the projection ought to have been made instead of which total number of trees is considered for a plot size of 10 acres and consequent projection has been made for entire area which is vastly unjust.

7.4 One Shri Govindbhai Ashabhai Patel is examined at exh.8. He was Conservator of Forest at the relevant time. He has given details about the plotting and calculation of the trees. Upon being asked by the Court, he gave his opinion about the density of trees which would normally be found in the region.

7.5 One Shri Kamarali Nadarali Saiyed is examined at exh.10. At the relevant time, he was working as Range Forest Officer, Palanpur. He has participated in

preparation of the plots and calculation of trees. In his deposition, he has given detailed account of preparation of plots. He stated that three different sample plots were prepared considering the density of the trees. The Surveyor had measured only 1 acre, similar 9 plots were prepared and added to the plots already prepared. Thus 10 acres of plots were prepared and totally 30 acres were earmarked for survey no. 192. He produced necessary documentary evidence along with his deposition in which he identified his own signature and that of other officers. In his cross examination, the petitioners could not dislodge his version in the chief. In-fact, he explained that since instruments brought by Surveyor was sufficient only for preparing 1 acre of plot, such 10 plots of 1 acre each were prepared. He denied suggestions that instead of 1 acre, it is shown that 10 acres of plots were produced.

8. From the above depositions, it can be seen that there was sufficient documentary evidence as well as oral evidence to permit the Gujarat Revenue Tribunal to come to the conclusion that proper procedure was followed and that sample plots size was 10 acres for the smaller plots and 10 acres for survey no.192. The said

witnesses clearly have deposed to this effect as noticed here-in-above. The deposition of Shri Govindbhai Ashabhai Patel at exh.8 and Shri Kamarali Nadarali Saiyed at exh.10 is significant in this respect. Both these witnesses in no unclear terms have stated that 10 acres plot were prepared. For survey no.192 it is stated by Shri Saiyed that three categories were decided depending on the density of the trees. Initially after preparing 1 acre plot due to limitations of instruments, duplication was made and individual 1 acre plots were prepared so as to make a block of 10 acres. He has clearly stated that for survey no. 192, a total of 30 acres were selected for sample survey. Though at the first reading, deposition of the witnesses Shri Dhanabhai Mulabhai Vankar(exh.6) and Shri Govindlal Chandulal Shah(exh.7) may appear to be suggesting that only 1 acre of plots were prepared, neither of these witnesses have with any clarity stated that larger plots were not prepared. Shri Dhanabhai Mulabhai Vankar has stated in his deposition that for calculation how many acres were calculated is not known to him therefore, his statement that only 1 acre plots were prepared has to be considered in light of his earlier statement. This is other-wise also in

consonance with what is stated by Shri Kamarali Nadarali Saiyed who deposed that due to limitations of instruments they had to prepare one acre plots individually. Thus, there is no conflict between the evidence of Shri Dhanabhai Mulabhai Vankar with rest of the oral as well as documentary evidence. Similarly Shri Govindlal Chandulal Shah in his deposition at exh.7 has only stated that three plots were prepared in disputed survey numbers of 1 acre each. He does not say or was not asked whether such similar 1 acre plots were prepared in the disputed survey numbers so as to make the sample plots size of 10 acres/30 acres as required. This aspect has been clarified by Shri Kamarali Nadarali Saiyed in his deposition. In-fact, if the deposition of Shri Govindlal Chandulal Shah is taken into account with all rigidity, he stated that one acre of plot in each of survey numbers were prepared. This is not even the case of the petitioners and, therefore, this evidence has to be understood in tune with other oral as well as documentary evidence.

9. It can thus be seen that there was sufficient clarity and evidence produced by State Government to establish that for survey no.192 sample plots of 30 acres was

prepared whereas for other two relatively smaller numbers 169 and 191, sample plots size of 10 acres was selected. Number of trees standing on such plots was calculated and eventually projected over the entire survey number. In view of the evidence as noticed here-in-above, it is not possible to hold that the conclusions arrived at by the Tribunal were perverse as not supported by any evidence on record. Even if two views were possible, this Court in exercise of writ jurisdiction under Article 227 of the Constitution of India would find it difficult to dislodge the factual findings arrived at by the lower Tribunal.

10. Relevance of request of the petitioners for further cross examination of one of the witnesses is fully not demonstrated. No capital can be drawn at this distant point of time without there being strong reasons to recall the entire order.

11. Though it was stated that the petitioners were not intimated about the preparation of the sample plots or of the calculation of trees thereon, at this point of time it is not possible to put the clock back and to cure the defect even if one was committed. This Court

will have to proceed on the basis of available material on record. The petitioners if aggrieved ought to have taken remedial measures at the relevant time to ensure that injustice if any can be mitigated.

12.In a writ jurisdiction under Article 227 of the Constitution of India, non filing of reply by the State cannot be fatal specifically when no allegations of mala fide have been made. The evidence is on record and Court has to examined the impugned orders and the material available. Non filing of reply by the State Government would not result into allowing of the petition.

13.In the result I find that it is not possible to interfere with the order passed by Gujarat Revenue Tribunal. The petition therefore, fails and is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi,J.)

(raghu)